



**E X A M I N A T I O N S**

	<b>DIRECT</b>	<b>CROSS</b>	<b>REDIRECT</b>	<b>RECROSS</b>
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(The proceeding commenced at 11:02 a.m.)

THE COURT: Good morning.

MR. ELLIKER: Good morning.

MR. WAGNER: Good morning.

THE COURT: Madam Clerk, can you call this matter, please.

THE CLERK: Yes, ma'am.

In the matter of Criminal Case 21 CR 42, *United States of America v. Keith Rodney Moore*.

The United States is represented by Kevin Elliker.

The defendant is represented by Robert Wagner. Counsel, are you ready to proceed?

MR. ELLIKER: The United States is ready, Your Honor.

Good morning.

MR. WAGNER: Mr. Moore is ready, Judge.

Good morning.

THE COURT: Okay. Great. Thank you.

Mr. Elliker.

MR. ELLIKER: Your Honor, we're here this morning for both an arraignment and a detention hearing for Mr. Moore, who is named in a one-count indictment filed -- or returned by the grand jury on May 4th of this year that charges a single violation of federal law, 18

1 U.S.C., Section 922(g)(1), possession of a firearm and  
2 ammunition by a convicted felon.

3 The maximum penalties associated with that  
4 offense are 10 years incarceration, a \$250,000 fine, three  
5 years of supervised release and forfeiture of the firearm  
6 in question.

7 The government calculates the speedy trial  
8 cutoff date as August 10, 2021, and is prepared to go  
9 forward today with evidence regarding the detention issue.

10 THE COURT: Okay. We'll do the arraignment  
11 first, and then we'll proceed to the detention hearing.

12 MR. ELLIKER: Thank you.

13 THE COURT: Thank you, Mr. Elliker.

14 Mr. Wagner, if you could -- actually, get you to  
15 come forward with Mr. Moore, please.

16 Good morning, Mr. Moore.

17 MR. MOORE: Good morning. How are you doing?

18 THE COURT: I'm good.

19 So, sir, today what we'll do is we're going to  
20 functionally have two hearings. The first is an  
21 arraignment where your trial date will be set, and then  
22 the second is a detention hearing. I'm going to do the  
23 arraignment first, and so for that purpose I'll ask the  
24 clerk to place you under oath.

25 THE CLERK: Sir, please raise your right hand.

1 Do you affirm under penalty of perjury that the  
2 answers to the questions you're about to be asked will be  
3 the truth, the whole truth, and nothing but the truth?

4 MR. MOORE: Yes, ma'am.

5 THE COURT: Okay.

6 Sir, can you please state your full name for the  
7 record.

8 MR. MOORE: Keith Rodney Moore.

9 THE COURT: And how old are you?

10 MR. MOORE: Thirty-three.

11 THE COURT: And how far did you go in school?

12 MR. MOORE: I got a G -- to the 11th.

13 THE COURT: You went to the 11th grade?

14 MR. MOORE: That's why I got a GED.

15 THE COURT: And then you got a GED. Okay.

16 MR. MOORE: Yes, ma'am.

17 THE COURT: So based on that, can you read,  
18 write, and understand the English language?

19 MR. MOORE: Yes, ma'am.

20 THE COURT: Okay.

21 Are you under the influence of any drugs or  
22 alcohol today?

23 MR. MOORE: No, ma'am.

24 THE COURT: And are -- have you been under the  
25 treatment of any doctor for any mental health illness?

1 MR. MOORE: No, ma'am.

2 THE COURT: There -- have you received, you  
3 should have likely, your attorney has placed it in front  
4 of you, a copy of the indictment in this case? That's the  
5 charging document.

6 MR. MOORE: Oh. Yes, ma'am.

7 THE COURT: And it sets forth that there's one  
8 charge, possession of a firearm by a convicted felon. Do  
9 you understand the charge against you?

10 MR. MOORE: Yes, ma'am.

11 THE COURT: Do you understand the maximum  
12 penalties that could apply if you are -- either plead  
13 guilty or found guilty of this offense?

14 MR. MOORE: Yes, ma'am.

15 THE COURT: Mr. Wagner, do you agree with the  
16 speedy trial cutoff as set forth by the government?

17 MR. WAGNER: Yes, Your Honor.

18 THE COURT: And have you had a sufficient  
19 opportunity to review the indictment with Mr. Moore prior  
20 to appearing before me today?

21 MR. WAGNER: I've -- I've come in this case with  
22 -- I think Ms. Koenig has been on it. I believe she  
23 reviewed it with him.

24 THE COURT: Okay.

25 Mr. Moore, did you review the indictment with

1 Ms. Koenig?

2 MR. MOORE: Yes, ma'am.

3 THE COURT: Okay.

4 Does -- Mr. Wagner, does Mr. Moore waive a  
5 formal reading of the indictment in this case?

6 MR. WAGNER: He does, Your Honor.

7 THE COURT: And would he request a trial by jury  
8 or trial by the Court?

9 MR. WAGNER: Jury, Your Honor.

10 THE COURT: Okay.

11 Madam Clerk, can you please arraign Mr. Moore.

12 THE CLERK: Yes, ma'am.

13 Keith Rodney Moore, you understand the charge  
14 against you in the indictment. I ask you now what is your  
15 plea, guilty or not guilty?

16 MR. MOORE: Not guilty.

17 THE COURT: Sir, your trial will be set before  
18 Judge Gibney for a jury trial on August 5th and 6th. And  
19 I'm going to give some instruction to the counsel, so you  
20 can return to your seat.

21 So, for the government, as required by Rule  
22 5(f), I'll order that you produce all exculpatory evidence  
23 to the defendant pursuant to *Brady v. Maryland*, and its  
24 progeny. And remind you that failure to do so may result  
25 in add -- in sanctions, including the exclusion of

1 evidence, adverse jury instructions, dismissal of charges  
2 and contempt proceedings. Do you understand that,  
3 Mr. Elliker?

4 MR. ELLIKER: Yes, Your Honor, we understand.

5 THE COURT: Okay. Thank you.

6 Also, regarding deadlines for Judge Gibney, the  
7 deadlines are as follows: Within 14 days, motions that  
8 challenge the sufficiency of the indictment, raise any  
9 issues regarding jurisdiction or for discovery to suppress  
10 evidence from mental examination, any objections regarding  
11 the use of evidence that require pretrial ruling and  
12 raising any other pretrial matter, those motions would be  
13 due within 14 days. Responses would be due 14 days  
14 thereafter, rebuttal briefs due three days after that.

15 Any other motions would be due 21 days before  
16 trial. Subpoenas are due 14 days before trial. Proposed  
17 voir dire and jury instructions are due seven days before  
18 trial, and those should be emailed to chambers. And if  
19 you wish to schedule a motion, you should contact  
20 chambers.

21 And it may be that Judge Gibney will also enter  
22 an order regarding that information because there was a  
23 lot of information.

24 So, okay, Mr. Elliker do you want to -- any  
25 other questions regarding that information I just provided



1 you-all?

2 MR. ELLIKER: No, Your Honor.

3 THE COURT: Okay.

4 Do you have any evidence related to detention?

5 MR. ELLIKER: Yes, we do, Your Honor.

6 THE COURT: Okay.

7 MR. ELLIKER: Your Honor, the United States  
8 calls Special Agent Joshua Valot.

9 THE CLERK: Do you affirm under penalty of  
10 perjury that the testimony you're about to give, in this  
11 case, before this Court, shall be the truth, the whole  
12 truth, and nothing but the truth, so help you God?

13 SPECIAL AGENT VALOT: I do.

14 Whereupon, **Special Agent Joshua Valot**, having  
15 been duly sworn in, testifies as follows:

16 **DIRECT EXAMINATION**

17 BY MR. ELLIKER:

18 Q Good morning. Could you please state your name, and  
19 spell it for the record.

20 A My name is Joshua Valot. My last name is spelled V,  
21 as in Victor, A-L-O-T.

22 Q Are you a special agent with the ATF?

23 A I am.

24 Q And how long have you been working for the ATF, Agent  
25 Valot?

DIRECT EXAM OF SPECIAL AGENT VALOT BY MR. ELLIKER 10

1 A I've been a special agent since 2005.

2 Q And are you the lead case agent on the investigation  
3 in this case?

4 A I am.

5 Q During the course of the investigation, have you  
6 reviewed reports written by law enforcement officers  
7 investigating this case?

8 A I have.

9 Q What kinds of reports have you reviewed?

10 A The Richmond Police Department generated reports on  
11 the -- on this incident, and those are what I've reviewed.

12 Q Did you also review police body worn camera footage  
13 that was related to this investigation?

14 A I have.

15 Q And based on the review of those materials, and  
16 others, are you familiar with the facts and circumstances  
17 underlying the indictment?

18 A I am.

19 Q Now, this investigation involves Mr. Moore. Is he a  
20 convicted felon?

21 A Yes, he is.

22 Q Now, generally speaking, are you aware of what and  
23 when he was convicted?

24 A I am.

25 Q Can you tell the Court what that is?

DIRECT EXAM OF SPECIAL AGENT VALOT BY MR. ELLIKER 11

1 A In 2011 and 2012, Mr. Moore was convicted with  
2 possession with intent to distribute narcotics.

3 Q And each of those were felony convictions?

4 A That's correct.

5 Q Now flash forward to December 5th, 2020, did Richmond  
6 police officers encounter Mr. Moore during an attempted  
7 traffic stop?

8 A They did.

9 Q Can you please describe to the Court what prompted  
10 the officers to attempt that traffic stop?

11 A The officers observed Mr. Moore driving a vehicle  
12 getting ready to leave a gas station. They observed  
13 Mr. Moore appeared to manipulate something on his -- in  
14 his lap area. They then observed that the license plate  
15 on the vehicle, which was a 30-day temporary tag, was  
16 identical to two other vehicles that they had pulled over  
17 earlier that evening and they knew did not come back as a  
18 legitimate registration. So they then proceeded to  
19 initiate a traffic stop with Mr. Moore.

20 At that point, Mr. Moore fled from the officers.  
21 He fled -- drove through three stop signs, and then  
22 eventually crashed his vehicle into a curb. He then got  
23 out of the vehicle and ran approximately one block before  
24 being detained by the officers.

25 Q Now, you mentioned that they identified Mr. Moore as

DIRECT EXAM OF SPECIAL AGENT VALOT BY MR. ELLIKER 12

1 the driver. Is it true that they identified him after  
2 they caught up to him in the -- when -- after he had fled  
3 on foot?

4 A That's correct.

5 Q Now, when the officers observed the car that he had  
6 fled from, what did they see on the floorboard of the car?

7 A They observed a firearm on the floorboard in plain  
8 view.

9 Q I'd like for you -- I think you walked up there with  
10 a couple of premarked exhibits. Could you look at what's  
11 been marked as Government's Exhibit 1?

12 A Yes, sir.

13 Q What is that?

14 A This is the firearm that was recovered from Mr. Moore  
15 or from the vehicle.

16 MR. ELLIKER: Your Honor, I'd move to enter  
17 Government's Exhibit 1 into evidence.

18 THE COURT: Any objection?

19 MR. WAGNER: No, Your Honor.

20 THE COURT: Okay. It will be admitted.

21 (Government's Exhibit 1 is received.)

22 MR. ELLIKER: Here. I'll send you up with this  
23 one, too.

24 That's for later. That -- that's the next one,  
25 Your Honor.

1 THE COURT: Thank you.

2 BY MR. ELLIKER:

3 Q Special Agent Valot, through your training and  
4 experience, are you familiar with firearms and accessories  
5 and attachments that can be used with firearms?

6 A Yes, I am.

7 Q Now, this photograph in Government's Exhibit 1, what  
8 kind of firearm is that?

9 A There's a Taurus semi-auto -- semi-automatic handgun  
10 in that photograph, along with a pistol stabilizing brace.

11 Q Could you describe more about the -- are the  
12 pistol -- you just said pistol and stabilizing brace. Is  
13 that an attachment to the gun?

14 A That is an attachment.

15 Q And could you describe for the Court what the  
16 features are of that attachment?

17 A So, within this -- within this photograph, there is  
18 the semi-automatic handgun that I mentioned. And then  
19 basically that firearm is -- has been placed inside what  
20 we -- what is called a stabilizing brace, which the long  
21 part at the end is used to actually -- to fire the  
22 firearm, you stick your hand through the -- the brace on  
23 the left side of the photograph, and then that helps you  
24 hold the firearm and it helps to reduce recoil for  
25 shooting the firearm.

DIRECT EXAM OF SPECIAL AGENT VALOT BY MR. ELLIKER 14

1 Q Are there other features on the brace itself that  
2 assist in the use of the firearm?

3 A There's a red -- there's a holographic sight on the  
4 top to be able to sight into a target. There's also a  
5 laser sight and a flashlight there attached to the side of  
6 the brace.

7 Q Is it fair to say then that these features assist a  
8 shooter in aiming at the intended target?

9 A Yes, sir.

10 Q And that the -- the feature of the brace, I think I  
11 heard you describe, was that it helps to reduce the recoil  
12 in the -- in the course of firing the weapon?

13 A That's correct.

14 Q Now, in your training and experience, do you know --  
15 you mentioned, I think, the brace fitting your hand  
16 through it. Do you know other ways that users of these  
17 kinds of accessories might fire the weapon with a brace?

18 MR. WAGNER: Objection to the speculative nature  
19 unless it applies to this defendant in this case or he has  
20 personal experience.

21 THE COURT: I'll overrule it. I mean, to the  
22 extent that it's -- he has -- his expertise bears on how  
23 this device can be used.

24 MR. ELLIKER: Well, and I -- Your Honor, I think  
25 I may have poorly framed the question.

1 BY MR. ELLIKER:

2 Q You described the designed -- I understood you to  
3 design -- to describe the designed method of use of the  
4 brace by fitting your arm through. Is my -- is my  
5 understanding correct on that?

6 A That's correct.

7 Q Are there other ways, in your training and  
8 experience, that you know people who have these kinds of  
9 braces would use that brace without fitting their hand  
10 through the brace?

11 A Yes, sir.

12 Q How is that?

13 A It could be used to stick the -- the brace part that  
14 goes -- your hand goes through up -- up against your  
15 shoulder to use it -- to be able to use your shoulder as  
16 helping you to assist firing the weapon.

17 Q And would that also reduce the recoil and assist in  
18 aiming?

19 A Yes, it could.

20 Q Now, you said you reviewed the body worn camera  
21 footage in this case, is that correct?

22 A That's correct.

23 Q And in those recordings, did the defendant admit to  
24 officers the reason he fled the traffic stop was because  
25 he had this firearm?

1 A He did.

2 Q Now, in addition have you reviewed records from  
3 Henrico County regarding Mr. Moore's acknowledgment of  
4 prohibition on the possession of firearms?

5 A I believe that was from -- I'm not sure if that was  
6 Henrico County or that was from probation -- it was from a  
7 probation and parole office. I'm not sure if it was based  
8 out of Henrico.

9 Q But you have reviewed records that show Mr. Moore  
10 signing acknowledgment that he is a prohibited person, not  
11 allowed to use -- to possess a firearm?

12 A That's correct.

13 Q Okay. And was the defendant taken into custody on  
14 the evening of December 5th, 2020?

15 A Yes, he was.

16 Q And, subsequently, was he later released and placed  
17 on home electronic monitoring by the City of Richmond?

18 A Yes, sir.

19 Q Have you reviewed records related to his compliance  
20 with home electronic monitoring?

21 A I have.

22 Q I ask you to take a look at what's been marked as  
23 Government's Exhibit 2. Can you say what that exhibit is?

24 A This is a report from -- from the pretrial services  
25 from -- relating Mr. Moore's home electronic monitoring.



DIRECT EXAM OF SPECIAL AGENT VALOT BY MR. ELLIKER 17

1 Q And is this the report that you reviewed related to  
2 his home electronic monitoring?

3 A It is.

4 MR. ELLIKER: Your Honor, we'd move to enter  
5 Exhibit 2 into evidence.

6 THE COURT: Any objection?

7 MR. WAGNER: No objection.

8 THE COURT: It will be admitted.

9 (Government's Exhibit 2 is received.)

10 MR. ELLIKER: Thank you.

11 BY MR. ELLIKER:

12 Q I'd ask you to flip to the fourth page, which is --  
13 has the number 34 in the bottom right corner. The second  
14 paragraph, a few lines down, could you -- it starts on  
15 12/31/2020. Could you please read that.

16 A "On 12-31-2020 the client left his resident  
17 unauthorized on or about 4:09 pm without authorization.  
18 On 12-28-2020 the client was told he cannot attend a  
19 family's New Year's Eve Festivities. On 12-31-2020 the  
20 client was in and out of his residence unauthorized. I  
21 alerted the client several times. I called the client's  
22 phone number on file, but he did not respond. The client  
23 was out of the local community" -- "was out of the local  
24 community unauthorized until 2:57 a.m. on 1-1-2021. He  
25 did not respond to his alerts or phone calls while making

DIRECT EXAM OF SPECIAL AGENT VALOT BY MR. ELLIKER 18

1 unauthorized moves. He did not" -- "he did not filling  
2 out his weekly itinerary to reflect his movements for two  
3 or more hours while being tracked. This is the client's  
4 2nd violation. The client's action constitute a **Major**  
5 **Violation** of his HEM program agreement. Despite the  
6 programs best effort this client has demonstrated a  
7 blatant disregard of the court order and the HEM  
8 requirements."

9 Q And if you could flip forward to the page marked 41,  
10 and read the second paragraph that starts "1-2-2021."

11 A "On 1-2-2021 the client left his assigned resident  
12 at: XXX XXXXXX Street, Richmond, VA XXXXX. The client  
13 left his resident unauthorized on or about 9:38 p.m. He  
14 did not return to his resident until 10:38 p.m. The  
15 client was tracked to the unauthorized location listed  
16 below. The client was buzzed/vibrated, but he did not  
17 respond to his alerts. The client is aware of the  
18 consequences he is subject to if he continue to violate  
19 HEM program rules. This rep -- "this reprimand is the  
20 client's **3rd** write-up concerning his" violation --  
21 "concerning him violating his HEM program agreement. The  
22 Client's actions constitute his **2nd Major Violation** of the  
23 HEM program rules for unauthorized movements and not  
24 filling out his Weekly Itinerary to reflect his movements.  
25 Q Now, based on the violations of the HEM conditions,

CROSS-EXAM OF SPECIAL AGENT VALOT BY MR. WAGNER 19

1 was the defendant arrested by Richmond police on or about  
2 January 21st, 2021?

3 A Yes, he was.

4 Q And was he later released about a month later?

5 A Yes, he was.

6 MR. ELLIKER: Those are all the questions I  
7 have, Your Honor.

8 THE COURT: Okay.

9 Mr. Wagner. And, Mr. Wagner, I would note, I  
10 think it's clear from the documents related to his state  
11 supervision that following his release, the last page sets  
12 forth his conduct after that date. So, I've read it. I  
13 understand if you-all want to argue it, that's fine. I  
14 don't know that we need to have cross-examination of Agent  
15 Valot on that point, so I just would clarify that I've  
16 read this last page.

17 MR. WAGNER: Okay.

18 **CROSS-EXAMINATION**

19 BY MR. WAGNER:

20 Q So you know that he's been successful on pretrial  
21 release since his release. And I believe that release, if  
22 you know, was February 15th, is that right?

23 A It was around that time frame. Yes, sir.

24 Q And so he's been out for approximately four months  
25 since then?

1 A That's correct.

2 Q Okay. Are you aware of his employment situation?

3 A He had explained the employment situation when I took  
4 him into custody.

5 Q Two full-time jobs, right?

6 A That's what he told me.

7 Q All right. And did he tell you that he's taking care  
8 of his mother who has some health problems?

9 A He did not explain that part to me.

10 Q Okay. Are you aware of that from any other source?

11 A No, sir, I'm not.

12 Q All right. The -- you talked about the firearm in  
13 this case, and the -- the extra equipment that was added  
14 to the firearm. Do you know if there was a bullet in the  
15 chambers when the gun was found?

16 A There was not.

17 Q Okay. And this equipment that was added to the  
18 firearm, it doesn't expand the capacity of -- of bullets  
19 that the gun can fire, correct?

20 A That's correct.

21 Q Okay. So solely the cartridge that was in the gun.  
22 I think it had six bullets in it, is that right?

23 A The magazine had eight -- eight rounds in it.

24 Q Eight rounds. Okay.

25 And that was all that it could fire, correct?

1 A That's correct.

2 Q All right. You talked about his offenses. I believe  
3 one conviction was in 2010 for a drug violation, right?

4 A I believe it was 2011, but I could be wrong.

5 Q And there was one in 2012 as well, right?

6 A That's correct.

7 Q Do you know how much drugs were involved in those  
8 cases?

9 A I do not.

10 Q Do you know that there are no firearms involved in  
11 those cases?

12 A I do not.

13 Q And since his release on the 2012 drug violation,  
14 he's had no felony charges since then until December of  
15 2020, correct?

16 A That's correct.

17 MR. WAGNER: Thank you.

18 No further questions, Judge.

19 THE COURT: Okay.

20 Any redirect?

21 MR. ELLIKER: No, Your Honor.

22 THE COURT: Okay.

23 Thank you, Agent Valot. You can step down.

24 **WITNESS STOOD ASIDE**

25 Mr. Elliker, do you have additional evidence

1 you'd like to present?

2 MR. ELLIKER: No evidence, Your Honor. Thank  
3 you.

4 THE COURT: Mr. Wagner, do you have evidence?

5 MR. WAGNER: No evidence, Judge.

6 I just want to point out that Mr. Moore's mother  
7 is here, and she would serve as a third-party custodian.  
8 If the Court has any concerns or any questions for her,  
9 she's available for examination.

10 THE COURT: Okay. Thank you.

11 MR. WAGNER: Thank you.

12 THE COURT: Mr. Elliker, I'll hear from you.

13 MR. ELLIKER: Your Honor, acknowledged in this  
14 case is the government's burden to prove either --  
15 either/or, and danger to the community, or risk of flight.  
16 I think both are present here, but perhaps more -- more  
17 towards the danger to the community, the weight of the  
18 evidence in this case is very strong.

19 Obviously -- just to note for the record,  
20 obviously, there's already been a finding of probable  
21 cause by the grand jury and the return of the indictment,  
22 but the underlying incident involved flight from officers  
23 during a simple traffic stop, running multiple stop signs,  
24 crashing a car, fleeing on foot. By definition itself,  
25 the -- the method -- or the -- the inciting incident here

1 was a dangerous flight.

2           He possessed a firearm knowing that he was not  
3 supposed to, and that firearm had attachments that make it  
4 easier to aim and shoot and -- which make it a  
5 particularly dangerous weapon in the hands of someone  
6 who's not supposed to have it or may be using it for an  
7 illegal purpose.

8           And in terms of his criminal history, I'm aware  
9 that it was a little while ago, but I still think it's of  
10 relevance, his felony convictions, particularly given how  
11 it relates to a history of noncompliance with the law. We  
12 have a defendant who knew he was a felon who was not  
13 supposed to possess a firearm, and broke that law. Knew he  
14 was being pulled over the night of December 5th, and fled  
15 from police. Knew he was being monitored in this very  
16 case before it was indicted federally, and violated that  
17 program. That the people overseeing that in Richmond  
18 called it a flagrant violation of that program's  
19 requirements.

20           And I also think -- and I think this is right  
21 from reviewing the criminal history, that this offense is  
22 actually committed while a suspended sentence is still in  
23 effect from the most recent Henrico felony conviction  
24 because there was a -- that sentence imposed was suspended  
25 for a period of 10 years less than 10 years ago. So, that

1 is -- that's -- that's our position on detention - the  
2 need to protect the community.

3           At the same time while I'm here, I will  
4 recognize that the evidence that cuts in the defendant's  
5 favor, to the extent the Court is considering imposing --  
6 allowing the defendant's release, we would strongly urge  
7 the Court to appoint a third-party custodian with location  
8 monitoring to assure continued compliance with any  
9 conditions that the Court and the probation office would  
10 seek.

11           THE COURT: Okay.

12           MR. ELLIKER: Thank you.

13           THE COURT: Mr. Wagner.

14           MR. WAGNER: May I have just one moment, Judge?

15           THE COURT: Okay.

16           MR. WAGNER: Your Honor, we ask that Mr. Moore  
17 be released for pretrial detention purposes. He is not a  
18 danger. He does not pose a danger to the community. He  
19 is not a risk of flight.

20           And the best indicators for that, Judge, are the  
21 fact that he has complied with his conditions of state  
22 pretrial release for the past four months, and he has a  
23 stable job and a stable residence. Actually, two stable  
24 jobs. Two full-time jobs, and a stable residence.

25           THE COURT: What are his jobs?



1 MR. WAGNER: So, he works with GRTC.

2 THE COURT: And what does he do for them, do you  
3 know?

4 MR. WAGNER: He works as a -- cleaning and  
5 sanitizing the buses for Covid purposes. 7:00 p.m. to  
6 3:00 a.m.

7 We have an email also from his job with Family  
8 Enterprises. He acts with -- they're a moving company.  
9 He works from 9:00 to 5:00 Monday through Friday for the  
10 moving company. They install appliances. He's been doing  
11 this job for about two to three years, Your Honor.

12 The GRTC job he's had for the past four months  
13 since he was -- since he was released. And he carries  
14 these two jobs, Your Honor, because he has a young child  
15 to take care of. Actually, two children to take care of.  
16 And he indicates he has a child on the way.

17 And, also, so he can help take care of his  
18 mother. His mother has some medical problems, Your Honor.  
19 She has heart problems. Two stints in her heart. She has  
20 leg problems, hip replacements, gout, and she needs help  
21 getting to -- to medical appointments. And Mr. Moore  
22 provides that assistance for his mother. Lives with his  
23 mother.

24 And she would be a suitable third-party  
25 custodian in this case if this Court is considering his

1 release.

2 Judge, I would suggest to the Court that the  
3 best indicator of success on pretrial release is  
4 employment. As the Court well knows, people who have  
5 jobs, people who are employed, they tend to be much more  
6 compliant with a -- with rules of supervised release.

7 And this is not a presumption case, Judge.

8 Actually, I think if you read the Bail Reform Act, there  
9 appears to be a presumption in favor of release. 18

10 U.S.C. 3142 directs that the Court shall order the  
11 pretrial release of the defendant subject to the least  
12 restrictive conditions, or combination of conditions, as  
13 long as the Court is reasonably assured that he will not  
14 pose a danger to the community or a risk of flight. And  
15 so this -- this is the foundation for our request that the  
16 Court allow Mr. Moore to be released on pretrial pending  
17 the trial of this matter.

18 Judge, he has support in the community. A  
19 stable residence. His mother, again, is here to support  
20 him.

21 I think it's also important to understand the  
22 difference between state court and federal court. And,  
23 yes, there was a violation, or maybe two violations, in  
24 state court for his pretrial release there. He would tell  
25 the Court that there were two pretrial services officers.

1 One of the officers said it was okay for him to -- to go  
2 for the -- the -- it was a New Year's Eve celebration. To  
3 go out for the New Year's Eve celebration. And he admits  
4 there was another officer that told him not to. He went  
5 ahead and did it, and he was punished for that, and  
6 punished for what happened on the 2nd of January.

7 But since then, Judge, he's been completely  
8 compliant for four months with the conditions of his  
9 pretrial release in state court.

10 THE COURT: And it's -- it appears -- let me  
11 just ask this. I'm very concerned with -- to me, the  
12 conducted alleged in the pretrial violation report is  
13 flagrant and entirely unacceptable, but it does appear to  
14 me that he remained on home electronic monitoring during  
15 -- after his release. Is that your understanding as well?

16 MR. WAGNER: I can't answer that, Judge. I  
17 don't know the answer to that question. Let me ask him,  
18 if I could?

19 THE COURT: Okay. I mean, it says "per HEM,"  
20 which would be home electronic monitoring.

21 MR. WAGNER: Right.

22 MR. ELLIKER: Your Honor, I can say he was on  
23 electronic monitoring until he was arrested last week.

24 MR. WAGNER: Yeah, he was arrested at his job,  
25 and he did have home electronic -- that's how they found

1 him, evidentially, through the home electronic monitoring.  
2 So, yes, I guess the answer to that question would be,  
3 yes, he was on home electronic monitoring at the time, but  
4 now he's been taken into federal court, Judge. And that's  
5 kind of raised the stakes for him. And he understands  
6 that.

7 I mean, you know the impact that having a  
8 federal indictment on an individual, on a defendant. You  
9 know the impact that has on the defendant and has on -- on  
10 Mr. Moore. So he will take this even more seriously than  
11 he took the state situation.

12 But as I said, he has -- he has children to look  
13 out for out there. He has his mother to look out for. So  
14 he's going to be extra careful that he does not violate  
15 any of the conditions of his supervised release.

16 Judge, in these times of criminal justice  
17 reform, courts should be looking for alternatives to  
18 incarceration and not expend resources unnecessarily  
19 incarcerating individuals like Mr. Moore who can otherwise  
20 be law-abiding, productive citizens, someone with two  
21 full-time jobs, someone who has got to take care of his  
22 mother.

23 So I ask that the Court look at the situation  
24 with Mr. Moore, look at the last four months. If the  
25 government felt that Mr. Moore was a danger to the

1 community over this past four months, well, they could  
2 have issued a criminal complaint and brought him into  
3 custody. They could have brought the indictment sooner  
4 rather than allow him to be out for the last four months.  
5 So it's somewhat inconsistent for the government to argue  
6 that he's a danger now but wasn't for the past four months  
7 when they could have brought him into custody.

8 I think he's proven to the Court that he can be  
9 successful on pretrial release, as he has been for the  
10 past four months. And if this Court is inclined to take a  
11 chance on him, there can be conditions put in place that  
12 would assure his return to the Court, assure that he's a  
13 -- that he's safe out there, and that's home electronic  
14 monitoring.

15 We have good people in pre -- with out pretrial  
16 release program who can monitor him, who can keep tabs on  
17 him, and will let the Court know as soon as there are any  
18 kind of issues of noncompliance. So we -- we ask that the  
19 Court allow Mr. Moore to be released on conditions.

20 THE COURT: All right. Thank you.

21 Mr. Moore, can you please stand where you are.

22 So, sir, the question in a detention hearing is  
23 whether or not I can impose conditions, or a combination  
24 of conditions, to avoid a risk of flight or danger to the  
25 community. It's the government's burden to show either by

1 clear and convincing evidence that there's a danger to the  
2 community or by a preponderance of the evidence that  
3 there's a risk of flight. I'll start first with whether I  
4 think there's a risk of flight.

5           As -- you know, you are a lifetime resident of  
6 Richmond, you have a child here, it appears you have a  
7 child on the way. Your family is here willing to serve as  
8 a third-party custodian. I don't see -- you do have some  
9 criminal history, which I want to talk about. There's no  
10 evidence of significant failure to appear or not going to  
11 court when you're required to do so, and so I weigh that  
12 as well. And so I -- based on the record here, I don't  
13 think you're a risk of -- of flight.

14           I think then the other concern is the danger to  
15 the community, and we'll talk about that. So, regarding  
16 danger to the community, you know, I do -- I think this is  
17 a very close case. In part it is a close case because  
18 there's not a presumption. I listened very carefully to  
19 the alleged criminal conduct, which is serious, and  
20 does -- the presence of a loaded firearm in a vehicle,  
21 especially this type of device, presents a danger to the  
22 community in and of itself. And I think that the weight  
23 of that evidence is strong. Those would favor detention,  
24 and I weigh them.

25           I also consider the fact that there is some

1 history of use of marijuana, but not more significant  
2 substance abuse problems. There is a history of some  
3 violation of the pretrial.

4           Your failure to comply with home electronic  
5 monitoring is very serious. That type of conduct is not  
6 tolerated, and would not be tolerated in this Court. The  
7 first instance of it would result in incarceration. And  
8 so it's not just the failure to comply with home  
9 electronic monitoring, but it's the repetitive nature of  
10 that that I find absolutely concerning because it  
11 demonstrates a willingness to abide by conditions that  
12 attorney -- Judges may impose upon you. And so I do  
13 consider that, and the fact that there are -- there were  
14 some new charges while on supervision.

15           But I have to weigh that against what conditions  
16 I can impose, as well as the fact that your mother is  
17 here. She's going to serve as a third-party custodian.  
18 She would be available to supervise you basically  
19 continuously.

20           You have two jobs. I agree with Mr. Wagner. I  
21 think that is an indicator of willingness to comply. And  
22 then more recently there is an ability to comply while on  
23 pretrial, and at least the recommendation from apparently  
24 pretrial and then the Court's order that you remain on  
25 pretrial, which you did so until your arrest, without any

1 new criminal conduct or violations. And so I consider  
2 that on balance.

3 I think I can impose conditions, very strict  
4 conditions, to assure that that prior conduct which would  
5 raise a concern of dangerousness can be addressed. And so  
6 I'll order that once the home electronic monitoring can be  
7 put in place that you be released, but it will be on very  
8 strict conditions.

9 And I want to be absolutely as clear as I can  
10 with you that it is your obligation - not your mother's  
11 obligation, not your attorney's obligation, or the  
12 probation officer's obligation - to understand the  
13 conditions of pretrial release. And if you violate those  
14 conditions, the impact to you is very significant. One,  
15 you can be incarcerated. You can face additional terms of  
16 incarceration.

17 The district court can consider that conduct  
18 when considering your case once it's resolved. And so the  
19 effect of you during this period of time is very  
20 significant, and I want to make sure you understand that.  
21 Do you understand that?

22 MR. MOORE: Yes, ma'am.

23 THE COURT: Okay.

24 So, I'll find then release is appropriate. I'll  
25 go through those conditions with you.



1           You will be under the supervision of the  
2 pretrial services officer. You will be placed on home  
3 detention with electronic monitoring. You -- at the  
4 discretion of the pretrial services officer, can be  
5 approved for scheduled absences for employment, any  
6 treatment, attorney visits, court appearances, any court  
7 ordered obligations or other activities as approved by the  
8 probation officer.

9           And what that means is you have to get the  
10 probation officer's approval. And so if you have a work  
11 schedule, that has to be preapproved before you leave. If  
12 you need 22 minutes to get from your home to your work,  
13 you cannot leave. You need to schedule that travel time,  
14 and you cannot leave your residence until the time in  
15 which you are permitted to leave. And you must return at  
16 the time you are scheduled to return.

17           If you need to deviate from that schedule, you  
18 can only deviate if you have the prior approval of your  
19 pretrial services officer, do you understand that?

20           MR. MOORE: Yes, ma'am.

21           THE COURT: Okay.

22           You cannot possess a firearm, destructive device  
23 or other weapons. You may not violate any other state or  
24 federal law. You may not use or possess any narcotic drug  
25 or controlled substance. You will be drug tested. I will

1 know immediately if those drug tests come back positive,  
2 and so you are prohibited from using or possessing any  
3 controlled substances, do you understand that?

4 MR. MOORE: Yes, ma'am.

5 THE COURT: Okay.

6 Any testing or treatment at the discretion of  
7 the pretrial services officer for substance abuse.

8 Mr. Elliker, are there any other conditions that  
9 you would ask for that you think I may have missed?

10 MR. ELLIKER: Well, Your Honor, we had  
11 mentioned -- and forgive my lack of knowledge on this, but  
12 we had mentioned a third-party custodian. I don't know if  
13 that's -- if you're considering not doing that?

14 THE COURT: I -- no, I -- thank you.

15 MR. ELLIKER: Okay.

16 THE COURT: Is there anything else other than a  
17 third-party custodian?

18 MR. ELLIKER: No. No, Your Honor.

19 THE COURT: Okay.

20 I will place you then into the third-party  
21 custodian. Your mother will be your third-party  
22 custodian.

23 Ma'am, if you can stand where you are, please.  
24 I'd like to address you.

25 Thank you for being here today. I want to make

1 sure you understand, I know Mr. Wagner and the pretrial  
2 services officer have talked to you, about I want to  
3 ensure that you understand your obligations. And what  
4 that means is you've just heard me place your son on a  
5 number of conditions which require him to do certain  
6 things and not do certain things. As the third-party  
7 custodian, I'm relying on you to call the probation  
8 officer if he doesn't do -- if, you know, he violates  
9 those conditions in any way.

10 Is that -- are you willing to serve in that  
11 role?

12 MS. MOORE: Yes. Yes, ma'am.

13 THE COURT: And you think you can call me if he  
14 steps outside those lines?

15 MS. MOORE: Yes, ma'am.

16 THE COURT: Okay. And the reason that's  
17 important is because if you fail to do that, what your son  
18 has done, effectively, is to bring you into our criminal  
19 justice system, and if you don't do that, that then falls  
20 back not just on you, but on him, do you understand that?

21 MS. MOORE: Yes, ma'am.

22 THE COURT: Okay. Thank you, ma'am.

23 So you'll have paperwork to sign, and then the  
24 pretrial services officer will tell you how to get the  
25 home electronic monitoring installed. And once that's

1 done, then your son will be released, okay?

2 Thank you for your presence here.

3 Sir, do you have any questions about the  
4 conditions as I placed you on?

5 MR. MOORE: Yes, ma'am.

6 THE COURT: Do you have any questions?

7 MR. MOORE: Yes.

8 THE COURT: Okay. Ask your attorney real quick,  
9 and then I'll clarify.

10 Any questions, Mr. Wagner?

11 MR. WAGNER: He wanted to know if he could go to  
12 work.

13 THE COURT: Yeah, you can as approved by your  
14 probation officer.

15 MR. WAGNER: Can he also take his mother to her  
16 medical appointments?

17 THE COURT: Well, Mr. Moore, do you have a valid  
18 license?

19 MR. MOORE: I'm supposed to go to DMV coming up.

20 MR. WAGNER: He has a restricted license.

21 THE COURT: You have a restricted license.  
22 Okay.

23 What I -- for med -- if you have preapproval for  
24 medial appointments, your medical appointments, your  
25 unborn child's medical appointments, or your mother's

1 medical appointments, those would be appropriate reasons  
2 to ask the pretrial services officer. But those have to  
3 be preapproved.

4           And exceeding the bounds of what you're  
5 permitted to -- your driving privileges would be a  
6 violation of a state law. That would be a violation of  
7 your conditions of pretrial. So, I don't know what the  
8 status of your license is, but I would advise you of that.  
9 And you should talk to your attorney regarding when and  
10 how you're able to drive, do you understand that?

11           MR. MOORE: Yes, sir.

12           THE COURT: Okay.

13           Mr. Wagner, are there any other conditions that  
14 you think may be necessary here?

15           MR. WAGNER: No. Thank you, Judge.

16           THE COURT: Okay.

17           So, Mr. Moore, I wish you the best of luck. You  
18 will be remanded until the home electronic monitoring is  
19 put in place, okay?

20           Madam Clerk, anything further? No?

21           Thank you all. We'll stand in recess.

22           (The proceeding concluded at 11:43 a.m.)

23           REPORTER'S CERTIFICATE

24           I, Krista Liscio Harding, OCR, RMR,  
25 Notary Public in and for the Commonwealth of  
Virginia at large, and whose commission expires

1  
2 March 31, 2024, Notary Registration Number 149462, do  
3 hereby certify that the pages contained herein accurately  
4 reflect the recording transcribed by me, to the best of my  
5 ability, in the above styled action.

6 Given under my hand this 22nd day of June, 2021.

7 /s/

8 Krista Liscio Harding, RMR  
9 Official Court Reporter  
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